IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2365 OF 2003
IN
SUIT NO.1356 OF 2003

Pinky Properties P.Ltd. ..Plaintiffs

Vs.

Manjula Kishor Jain & Ors. ..Defendants

Mr.Harshad Parekh for the plaintiffs

Mr.R.R.Sharma for the defendant no.1 and 2

CORAM : S.U.KAMDAR, J
DATED : 24TH JANUARY, 2006

P.C.:

1. The learned counsel for the plaintiffs presses the motion as against defendant no.3 to 14. Defendant no.3 to 14 are impleaded as party defendant to the present suit by virtue of amendment to the suit. Averments as against defendant no.3 to 14 are found in para 15(a) and (b) of the said plaint. The only contention raised in para 15(a) and (b) of the plaint interalia are that at the instance of proposed society i.e. defendant no.3, defendant no.4 to 14 are instigated to park the car in open space of the compound of

the society and that is in breach of order of S.A.Bobde. J and therefore there should be an interim order as against defendant no.3 to 14 for an appointment of Court Receiver and an injunction restraining them from encroaching upon the property belonging to the plaintiffs.

2. It is not in dispute that the original builder had constructed commercial premises and premises are sold to various shop owners. The subject matter of this car parking space is open space in the in the compound of the said building. Plaintiffs claim that original builder did not convey the property to the proposed society as society is yet not formed because shop keepers who have purchased the shop premises have not registered their respective agreements. He claims to have purchased the property from original builder after the said shop premises are sold and is claiming that by virtue of purchase of property from the original builder he is entitled to ownership right in respect of open space of the compound and he is alone entitled to utilise the said open space for car parking space and no other

person is entitled to park their car in the open space premises of the building. He contends that in absence of conveyance or in absence of registration of society, right of purchasers are restricted to their respective shop premises alone which they have purchased under the agreement and not to the common open space of the building. Therefore he has contended that he is only entitled to utilise the said common area of the compound and defendant no.3 to 14 be restrained from using the said compound premises or any part thereof.

3. I am unable to accept the contention of the learned counsel for plaintiffs for more than one reason. Firstly, it is not in dispute that original builder has sold properties to the various shop owners and shop owners under their respective agreements are entitled to ultimately form society and have the property conveyed in their favour which would include land and building both. Merely because conveyance is not executed or the society is not registered, no right, title and interest is created in favour of the plaintiffs in respect of open space premises which is normally to be

conveyed to the said Co-operative Housing Society along with the building. In any event I am of the opinion, that in view of the fact that entire consideration has been paid by the person for the purchase of respective shop premises, equitable title has been created in their favour in respect of their shop premises as also the right to use the common space and open space for the purpose of their car parking. In that light of the matter, I am not inclined to pass any interim order in the present motion. Motion dismissed. No order as to costs.

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. Plaintiffs and defendant no.1 and 2 have tendered the consent terms duly signed by their Advocates. There shall be decree on admission as per the consent terms. The said consent terms are marked 'X' for identification. Suit as against defendant no.1 and 2 is disposed of. Suit as against other defendants to continue.